

## Message Text

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PAGE 01     CANBER 09122 200713Z  
ACTION EA-09

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TO SECSTATE WASHDC 9527

UNCLAS CANBERRA 9122

E.O. 11652: N/A  
TAGS: EALR, ETRD, AS  
SUBJ: FOREIGN PROCEEDINGS (PROHIBITION OF CERTAIN EVIDENCE)  
ACT 1976

REF: (A) CANBERRA 8428 (B) TRANSMITTAL SLIP OF NOVEMBER 20, 1976

1. FOR THE RECORD, FOLLOWING ARE AMENDMENTS TO SUBJECT ACT  
DISCUSSED IN REFTEL AND TRANSMITTED TO EA/ANP-NELSON ON  
NOVEMBER 20, 1976

QTE A BILL FOR AN ACT TO AMEND THE FOREIGN PROCEEDINGS  
(PROHIBITION OF CERTAIN EVIDENCE) ACT 1976.  
BE IT ENACTED BY THE QUEEN, AND THE SENATE AND HOUSE OF  
REPRESENTATIVES OF THE COMMONWEALTH OF AUSTRALIA, AS FOLLOWS:

- 1.(1) THIS ACT MAY BE CITED AS THE FOREIGN PROCEEDINGS  
(PROHIBITION OF CERTAIN EVIDENCE) AMENDMENT ACT 1976.
- (2) THE FOREIGN PROCEEDINGS (PROHIBITION OF CERTAIN EVIDENCE)  
ACT 1976 IS IN THIS ACT REFERRED TO AS THE PRINCIPAL ACT.
2. THIS ACT SHALL COME INTO OPERATION ON THE DAY ON WHICH  
IT RECEIVES THE ROYAL ASSENT.
3. SECTION 3 OF THE PRINCIPAL ACT IS AMENDED BY ADDING AT  
THE END OF THE DEFINITION OF "FOREIGN TRIBUNAL" THE WORDS  
", BUT DOES NOT INCLUDE THE JUDICIAL COMMITTEE OF THE PRIVY  
COUNCIL IN THE EXERCISE OF JURISDICTION IN RESPECT OF  
APPEALS FROM ANY COURT IN AUSTRALIA".

UNCLASSIFIED

UNCLASSIFIED

PAGE 02     CANBER 09122 200713Z

RM SECTION 4 OF THE PRINCIPAL ACT IS AMENDED -  
(A) BY INSERTING IN PARAGRAPH (A) OF SUBJ-SECTION (1),  
AFTER THE WORD "RELATE", THE WORDS, "BEING THE ONLY  
PROCEEDINGS OF A FOREIGN TRIBUNAL IN RELATION TO WHICH  
THE RESTRICTIONS ARE TO HAVE EFFECT"; AND  
(B) BY OMITTING SUB-SECTION (2) AND SUBSTITUTING THE

FOLLOWING SUB-SECTION:

"(2) A REFERENCE IN THIS SECTION TO THE IMPOSITION OF RESTRICTIONS IS A REFERENCE TO THE MAKING OF AN ORDER UNDER SECTION 5 OR THE REFUSING OF CONSENT UNDER THAT SECTIONS."

5. SECTION 6 OF THE PRINCIPAL ACT IS AMENDED BY OMITTING PARAGRAPH (A) OF SUB-SECTION (1) AND SUBSTITUTING THE FOLLOWING PARAGRAPH:

"(A) MAY BE SERVED ON THE PERSON OR PERSONS TO WHOM IT IS DRECTED BY PUBLICATION OF THE ORDER IN THE GAZETTE; OR".

6. AFTER SECTION 6 OF THE PRINCIPAL ACT THE FOLLOWING SECTION IS INSERTED:

"6A.(1) THE PROVISIONS OF SECTION 48 OF THE ACTS INTERPRETATION ACT 1901 (EXCEPT PARAGRAPHS (1)(A) AND (B) AND SUB-SECTION (2) APPLY, BY FORCE OF THIS SECTION, TO AN ORDER UNDER THIS ACT IN LIKE MANNER AS THOSE PROVISIONS APPLY IN RELATION TO A REGULATION.

"(2) NOTHING IN THE PROVISIONS APPLIED BY THIS SECTION AFFECTS THE OPERATION OF AN ORDER AT ANY TIME BEFORE IT BECOMES VOID, OR IS DISALLOWED, IN ACCORDANCE WITH THOSE PROVISIONS."

7. AFTER SECTION 7 OF THE PRINCIPAL ACT THE FOLLOWING SECTION IS ADDED:-

"8. NOTHING CONTAINED IN ANY LAW OF THE COMMONWEALTH OR OF A STATE OR TERRITORY OR IN ANY IMPERIAL ACT IN FORCE IN A STATE OR TERRITORY SHALL HAVE THE EFFECT OF REQUIRING, OR EMPOWERING ANY TRIBUNAL TO REQUIRE A PERSON TO DO AN ACT OR THING THAT WOULD BE A CONTRAVENTION BY THAT PERSON OF AN ORDER UNDER THIS ACT.". END QTE  
UNCLASSIFIED

UNCLASSIFIED

PAGE 03      CANBER 09122 200713Z

2. COMMENT: THE AMENDMENTS BECAME NECESSARY WHEN THE ATTORNEY GENERAL'S DEPARTMENT ADVISED THE GOVERNMENT THAT DUE TO THE HURRY SURROUNDING THE DRAFTING AND PASSAGE OF THE ORIGINAL ACT, IT CONTAINED CERTAIN PORTIONS THAT WERE PROBABLY UNCONSTITUTIONAL. THE AMENDMENTS ARE DESIGNED TO OVERCOME THESE DIFFICULTIES. THE BILL WAS PASSED BY THE HOUSE ON DECEMBER 8, THE SENATE ON DECEMBER 10 AND RECEIVED ROYAL ASSENT ON DECEMBER AS ACT NO. 202 OF 1976.  
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## Message Attributes

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